

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
SEP 5 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
State of New York Department of Public Service)
Request for Release of a New Area Code to)
Provide Relief for the 716 Numbering Plan Area)
_____)

CC Docket No. 96-98
NSD File No. E-00-161

SPRINT COMMENTS

Sprint Corporation, on behalf of its local, long distance, and wireless divisions (collectively, "Sprint"), submits these comments in response to the request of the New York Public Service Commission ("NYPSC") seeking an order directing the North American Numbering Plan Administrator ("NANPA") to release a new area code in order to provide much needed relief for the 716 Numbering Plan Area ("NPA").¹

I. The Commission Should Announce a Ban on NPA Relief Splits That Do Not Use Rate Center Boundaries, At Least Until the Numbering Crisis has Abated

Our nation is in the midst of a severe numbering crisis. Some carriers cannot timely obtain the telephone numbers they need, while other carriers hold more numbers than they could ever possibly use. An ever growing number of NPAs are in jeopardy, but states regulators are coming under increased public pressure to postpone (or in the case of California, avoid altogether) much needed relief. Yet, the failure to adopt timely NPA relief inhibits the ability of carriers to obtain the numbers they need when they need

¹ See Public Notice, "Common Carrier Bureau Seeks Comments on the State of New York Department of Public Service Request for the Release of a New Area Code to Provide Relief for the

No. of Copies rec'd _____
List A B C D E _____

them. Sadly, this inaction most negatively affects the most effective competitors in the market — carriers providing services that the public finds of value and as a result, are growing rapidly. The number crisis is thus severely undermining the foundation underlying the nation’s overriding policy for the telecommunications sector: robust competition.

The Commission, state regulators, and industry each have spent an extraordinary amount of time over the past year or so in an attempt to break out of this crisis. The Commission established a roadmap to begin solving the crisis with the release of its *Optimization Order* in March. However, it will be at least another two years (and realistically, more like three or four years) before the full benefits of the new conservation measures can be realized.

There is a growing, and in Sprint’s judgment, disturbing policy trend underway. At the same time that states are complaining about number inefficiency and the need to adopt additional relief, they are beginning to take steps that exacerbate the number crisis: when adopting geographic splits, states are often adjusting NPA boundaries to county or other geopolitical boundaries, rather than on rate centers.

Industry guidelines are very clear in this matter: “Geographic NPA boundaries must follow rate center boundaries.”² As the North American Numbering Council (“NANC”) has explained, industry adopted this position for a good reason: splitting NPAs along boundaries other than rate centers results in the unnecessary duplication of

716 Numbering Plan Area,” CC Docket No. 96-98, NSD File No. L-00-161, DA 00-1896 (Aug. 9, 2000).

² INC, *NPA Code Relief Planning & Notification Guidelines*, INC 97-0404-016 ¶ 2.11. See also *id.* at ¶ 6.1 (“The actual boundaries must conform to existing rate center boundaries.”).

numbering resources, and this duplication “is an inefficient use of numbers that can lead to a premature exhaust of the affected NPA”:

[NANPA] estimates that in one case at least 104 additional codes would be used at the time of the split by wireline carriers. The practice of splitting rate centers also appears to affect local number portability (LNP) by constraining the geographic area in which numbers can be ported.³

The inefficiency of non-rate center NPA boundaries can be considerable. Many NPA boundaries are in more rural areas and served by smaller ILECs, which are often not LNP/pooling capable. The ILEC may be using only 2,000 of its 10,000 numbers. If this ILEC is forced to obtain a duplicate code to maintain seven-digit local dialing, its utilization rate will fall from 20% to 10%. More fundamentally, this ILEC will now have 18,000 “available” numbers — most of which it will never assign to its own customers, but numbers that nevertheless are beyond the reach of carriers with a true need.

A sizable inefficiency will also ensue if the NPA boundary is served by a large ILEC. To maintain seven-digit local dialing,⁴ an ILEC must obtain a duplicate code (or sets of thousands blocks), *and* it also cannot duplicate line numbers between the two codes (or blocks). Thus, even if the ILEC was to achieve the theoretical maximum efficiently (which is highly unlikely), it will *at best* achieve a utilization rate in the affected rate centers of only 50%.

³ Letter from Alan Hasselwander, NANC Chairman, to Lawrence Stricking, Common Carrier Bureau Chief, at 1 (Aug. 26, 1999).

⁴ The duplication of codes (and resulting number inefficiency) would not occur if 10-digit local dialing were used, as is becoming increasingly common in larger urban areas. But if 10-digit dialing were used, there would be even less reason to depart from rate center NPA boundaries.

The Commission is aware of what happened in Phoenix and Minneapolis, where one rate center was split into three and four NPAs respectively.⁵ The number inefficiency caused by these relief plans was, and remains, significant. The current New York petition already represents the third time (in a year or so) that the NYPSC has sought to adopt a relief plan using boundaries other than rate centers. But there are now indications that the problem could get much worse if the Commission decides to override (or liberally waive) industry guidelines. For example, a telecommunications law recently enacted in Michigan appears to require the Michigan Commission to readjust *all existing* NPA boundaries along county lines.⁶ The number inefficiency impacts of such action at this time could be enormous — especially if this trend expands to other states. States should adopt policies that use numbers efficiently, just as they expect carriers to use numbers efficiently.

Sprint understands why consumers and state regulators may prefer to use NPA boundaries other than ILEC rate centers. In an ideal world, state regulators and industry would work cooperatively to meet this apparent public need. But as a matter of sound public policy, it makes no sense to meet this apparent need (most generously character-

⁵ These two situations are particularly troubling because they wasted valuable NPA codes. It is important for this Commission to remember state decisions involving numbering no longer involve a decisions impacting that state only. The inefficient use of numbers in one state, whether leading to the premature assignment of NPA codes or the assignment of unnecessary NPA codes, affects all other states (because resources inefficiently used in one state cannot be used in other states).

⁶ As amended earlier this year, Section 303(5) of the Michigan Telecommunications Act provides that “[t]o the extent that it is technically and economically feasible, the commission shall issue orders requiring the modification of all area code boundaries in this state to insure that they conform to county lines.” MCL 484.2303(5); MSA 22.1469(303)(5).

ized as a need of convenience) when in doing so one exacerbates the crisis that everyone is working so hard to remedy.⁷

Congress gave this Commission exclusive jurisdiction over telephone numbers for a reason: timely access to numbers is critical to the growth of competition and when numbers become scarce, a decision made in one state may impact other states throughout the country. The number crisis is so severe and pervasive that it is essential that the Commission exercise leadership and establish priorities. Sprint therefore recommends that the Commission initiate at least a two-year ban on any geographic split NPA relief plans that do not use rate center boundaries as NPA boundaries. This ban could be lifted once the number crisis is under control — when the impact of NPA relief plans using boundaries other rate centers will be far less significant because of the positive effects of the new conservation measures that are now beginning to be implemented

II. The NYPSC's 716 Relief Order Presents a Difficult Choice for the Commission: Poor Number Policy or Much Needed Area Code Relief

Before the NYPSC, Sprint and others opposed the establishment of a new NPA that did not use rate centers as its boundaries, with Sprint specifically explaining the number efficiencies that would result.⁸ Though recognizing the resulting number inefficiencies, the NYPSC nonetheless ordered that the new NPA boundaries be based on

⁷ Splitting rate centers can actually cause consumer inconveniences that the states appear to have overlooked. Splitting rate centers creates 10-digit dialing within that community. It also poses a complication for number portability – a consumer could port his or her telephone number into another area code, creating 10 digit dialing to that customer.

⁸ See NYPSC, *Opinion and Order Directing a Geographic Split of the 716 NPA*, Case 99-C-0800, Opinion No. 00-06, at 14-15 (May 22, 2000)(“716 NPA Relief Order”).

county lines.⁹ In support, the NYPSC noted that this Commission had earlier permitted the NYPSC to ignore industry guidelines requiring use of rate center boundaries.¹⁰

In ordinary circumstances, Sprint believes that state commissions like the NYPSC should be given the benefit of doubt.¹¹ But these are not ordinary circumstances.

The NYPSC contends that the number inefficiency caused by its order will be “minimal,” involving 14 rate centers and “no more than 29 NXX codes.”¹² These projections are optimistic. The number of affected rate centers could increase depending on decisions made by certain Indian tribes. The number of projected affected NXX codes assumes that there will never be any competitive entry in these areas — an assumption that hopefully is not realistic.

Sprint acknowledges that the Commission previously allowed the NYPSC to ignore rate centers with its 914 NPA relief plan, a plan that split “only five rate centers” and caused the unnecessary duplication of “only ten to twenty CO codes.”¹³ One might conclude that the current 716 NPA proposal (14-16 rate centers/29-50 codes) is within the parameters that the Commission approved for the 914 NPA.

However, the Commission has an obligation to review the question (and its earlier 914 NPA decision) from the other angle, and consider the precedential effect that any 716

⁹ *Id.* at 28-29.

¹⁰ *Id.* at 28.

¹¹ So the record is clear, Sprint does not challenge the sincerity in which the NYPSC believes that its proposed relief plan best meets the public interest. But what is in the best interests of New York citizens may not be in our nation’s best interests.

¹² Letter from Lawrence Malone, NYPSC General Counsel, to Lawrence Stricking, Common Carrier Bureau Chief, at 1-2 (June 20, 2000)(“*NYPSC Petition*”).

¹³ *914 NPA Relief Plan Approval Letter*, 15 FCC Rcd 8517 (1999). In this letter, the Bureau “urged” states to “avoid adopting area code splits that do not follow rate center boundaries,” further stating that it would review “critically any future area code relief plans that are clearly outside the industry guidelines.” *Id.*

NPA decision will have. Specifically, if the Commission approves a departure for the NYPSC of this magnitude, it may be challenged to deny similar proposals made by other states.

Here, however, is the real dilemma facing industry and the Commission. No one disputes the need to implement now a relief plan for the 716 NPA. Indeed, as the NYPSC stated only three months, the need for relief “even more critical than previously thought.”¹⁴ Yet, if this Commission rejects the current 716 NPA plan, the NYPSC undoubtedly will need additional time to reevaluate its options and to develop a revised relief plan — meaning that a implementation of relief plan will be delayed for yet additional months. Such delays may be more injurious to competition than the number inefficiency created by this particular relief plan.

The NYPSC has painted the Commission and industry in into a corner: bad public policy or much needed area code relief. If the Commission grants the pending NYPSC request, it should make clear that no further requests (whether made by New York or any other state) will be entertained for the next two years, until the number crisis is under control.

III. The Commission Needs to Establish Efficient Procedures to Review State Commission Numbering Decisions

Congress has given the Commission “exclusive jurisdiction” over telephone numbers with the option to delegate some or all of this authority to the states.¹⁵ The Commission has chosen to exercise this delegation authority in certain instances, but it has not yet established an appellate review procedure for states acting pursuant to their delegated

¹⁴ *716 NPA Relief Order* at 24.

authority. Because numbering issues are often so time sensitive, it becomes critically important for the Commission to handle any challenges expeditiously.

The facts of this case make the point. The NYPSC released its 716 NPA relief order on May 22, 2000, the NYPSC determining that there is a “critical” need for relief. Three weeks later, on June 12, 2000, NANPA advised the NYPSC that its request for a relief code was denied because the order was inconsistent with industry guidelines.¹⁶ To its credit, the NYPSC promptly filed its FCC petition the next week, on June 20, 2000.

However, seven weeks elapsed before the Commission even released its public notice requesting public comment.¹⁷ The Commission allowed nearly a month for comments, and 15 days for replies.¹⁸ Even if the Commission were to decide the issue within one month of the close of the pleading cycle (by October 20, 2000), admittedly an aggressive target, five months will have elapsed since the NYPSC released its relief order. If the Commission were to deny the NYPSC petition, the NYPSC will need additional time (perhaps several months) to develop an alternative relief plan — assuming it chooses not to exercise its appellate rights. A review/reconsideration procedure that consumes five to nine months (or longer) which involves an NPA that everyone agrees requires relief is not workable — and Sprint would hope the FCC would agree, not acceptable.

¹⁵ See 47 U.S.C. § 251(e)(1).

¹⁶ Sprint is sensitive to the increased time demands being placed on NANPA in recent months, and that its workload is growing faster than its resources. Nevertheless, the inconsistency between the NYPSC order and governing guidelines is and was clear, and NANPA should try to act more promptly (e.g., within 10 days).

¹⁷ See *Public Notice*, DA 00-1806 (Aug. 9, 2000).

¹⁸ *Id.*

Sprint therefore respectfully recommends that the Commission adopt the following procedure in future reviews of state commission numbering decisions:

1. The Commission should release its public notice within one week of the filing date;
2. Comments should be due no later than 15 days after the date of the public notice;¹⁹ and
3. Replies should be due within 10 days of the comments (13-15 days with the time for mailing).

Sprint would further hope that the Commission would establish a target decision date within one month of the close of the pleading cycle.

Sprint understands fully that these proposed dates are aggressive. But it is important to remember that any delays in implementing relief will either increase the likelihood that carriers in need of numbers will be unable to obtain them or decrease the time that the residents of the 716 NPA will have to adjust to the new relief plan. The residents of the 716 NPA lose in either situation — either because they cannot use of the services of the carrier of their choice (for lack of available numbers) or because they will have insufficient time to adjust to the new environment.

IV. Conclusion

The choice before the Commission is not ideal. But given the Congressional directive to fostering competition, it is important that a 716 NPA relief plan be implemented swiftly — because no numbers, no service, no competitive entry. Given the unusual facts presented, Sprint recommends on balance that the Commission grant the NYPSC petition, but that it further advise states that further waivers will not be permitted until the number crisis is under control. Because of the exigency of the current petition,

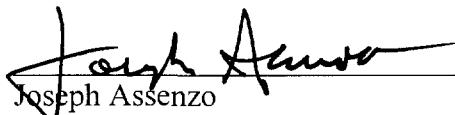
¹⁹ Because ordinarily the same issues already had been addressed before state commission, additional comment time is not needed.

the Commission should postpone for another day (or another proceeding) its inquiry into the tension between the policy against splitting rate centers in area code relief planning and rate center consolidation.²⁰

Respectfully submitted

Sprint Corporation

By:

A handwritten signature in black ink, appearing to read "Joseph Assenzo", written over a horizontal line.

Joseph Assenzo
General Attorney, Sprint PCS
4900 Main, 11th Floor
Kansas City, MO 64112
816-559-2514

September 5, 2000

²⁰ See Public Notice at 3.

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this ____th day of September 2000, I served a copy of the foregoing Sprint Comments by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

*ITS
1231 20th Street, N.W.
Washington, D.C. 20036

*L. Charles Keller, Chief
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3C-207
Washington, D.C. 20554

*James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

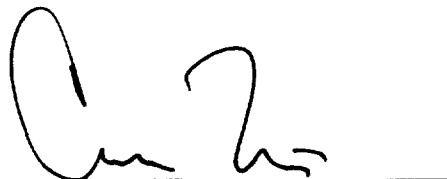
*Dorothy Atwood, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Yog R. Varma, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Lawrence G. Malone, General Counsel
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

*Al McCloud
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 6A-320
Washington, D.C. 20554

Ronald R. Conners, Director
North American Numbering Plan Administrator
NeuStar, Inc.
1120 Vermont Avenue, N.W., Suite 550
Washington, D.C. 20005


Anthony Traini